

## § 648.9

## 50 CFR Ch. VI (10–1–08 Edition)

a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The non-permanent markings must be displayed in conformity with the above requirements.

(e) *New Jersey surf clam or ocean quahog vessels.* Instead of complying with paragraph (a) of this section, surf clam or ocean quahog vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that state.

### § 648.9 VMS requirements.

(a) *Approval.* The Regional Administrator will annually approve VMSs that meet the minimum performance criteria specified in paragraph (b) of this section. Any changes to the performance criteria will be published annually in the FEDERAL REGISTER and a list of approved VMSs will be published in the FEDERAL REGISTER upon addition or deletion of a VMS from the list. In the event that a VMS is deleted from the list, vessel owners that purchased a VMS unit that is part of that VMS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by the Regional Administrator.

(b) *Minimum VMS performance criteria.* The basic required features of the VMS are as follows:

(1) The VMS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden by any person aboard a fishing vessel or by the vessel owner.

(2) The VMS shall be fully automatic and operational at all times, regardless of weather and environmental conditions, unless exempted under paragraph (c)(2) of this section.

(3) The VMS shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nm offshore and shall provide position accuracy to within 400 m (1,300 ft).

(4) The VMS shall be capable of transmitting and storing information

including vessel identification, date, time, and latitude/longitude.

(5) The VMS shall provide accurate hourly position transmissions every day of the year unless otherwise required under paragraph (c)(1)(ii) of this section, or unless exempted under paragraph (c)(2) of this section. In addition, the VMS shall allow polling of individual vessels or any set of vessels at any time, and receive position reports in real time. For the purposes of this specification, “real time” shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel’s actual position.

(6) The VMS shall be capable of providing network message communications between the vessel and shore. The VMS shall allow NMFS to initiate communications or data transfer at any time.

(7) The VMS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in a file format acceptable to NMFS.

(8) The VMS shall be capable of providing vessel locations relative to international boundaries and fishery management areas.

(9) The VMS vendor shall be capable of archiving vessel position histories for a minimum of 1 year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc.).

(c) *Operating requirements for all vessels.* (1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by paragraph (c)(1)(ii) or (iii) of this section, all required VMS units must transmit a signal indicating the vessel’s accurate position, as specified under paragraph (c)(1)(i) of this section.

(i) At least every hour, 24 hours a day, throughout the year.

(ii) [Reserved]

(iii) At least twice per hour, 24 hrs. a day, throughout the year, for vessels issued a scallop permit and subject to the requirements of § 648.4(a)(2)(ii)(B).

(2) *Power down exemption.* (i) Any vessel required to transmit the vessel's location at all times, as required in paragraph (c)(1) of this section, is exempt from this requirement if it meets one or more of the following conditions and requirements:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours, the vessel signs out of the VMS program by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, and the vessel complies with all conditions and requirements of said letter;

(B) For vessels fishing with a valid NE multispecies limited access permit, a valid surfclam and ocean quahog permit specified at § 648.4(a)(4), or an Atlantic sea scallop permit, the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

(C) The vessel has been issued a limited access herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such vessels must activate the VMS unit and enter the appropriate activity code prior to leaving port.

(D) The vessel has been issued an LAGC scallop permit, is not in possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, the vessel operator has notified NMFS through VMS by transmitting the appropriate VMS power-down code that the VMS will be powered down, and the vessel is not required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must repower the VMS and submit a valid VMS activity declaration prior to moving from the fixed dock or mooring. VMS codes and instructions are available from the Regional Administrator upon request.

(ii) *Letter of exemption.*—(A) *Application.* A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/

her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed (*i.e.*, the time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 continuous hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

(B) *Issuance.* Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under paragraph (c)(2) of this section, and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.

(d) *Presumption.* If a VMS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or NE multispecies or monkfish fishery, as applicable, or was not at sea.

(e) *New and replacement VMS installations.* The vessel owner/operator required to use a VMS must provide to the NMFS Northeast Region Office of Law Enforcement verification of vendor activation prior to departure on a fishing trip requiring VMS. A VMS certification of installation form is available from the NMFS Regional Administrator. Should a VMS unit require replacement, a vessel owner must submit documentation to the Regional Administrator, within 3 days of installation and prior to the vessel's next trip, verifying that the new VMS unit is an

## § 648.10

operational, approved system as described under paragraph (a) of this section. Vessel owners required to use a VMS in the Atlantic surfclam and ocean quahog fishery, as specified at § 648.15(b), must confirm the VMS operation and communications service to NMFS by calling 978-281-9213 to ensure that position reports are automatically sent to and received by NMFS Office of Law Enforcement (OLE). For the Atlantic surfclam and ocean quahog fishery, NMFS does not regard the fishing vessel as meeting the VMS requirements until automatic position reports and a manual declaration are received.

(f) *Access*. As a condition to obtaining a limited access scallop or multispecies permit, or an Atlantic herring permit, all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS data, if applicable, and location data obtained from its VMS unit, if required, at the time of or after its transmission to the vendor or receiver, as the case may be.

## 50 CFR Ch. VI (10-1-08 Edition)

(g) *Tampering*. Tampering with a VMS, a VMS unit, or a VMS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's ability to operate properly, signal, or accuracy of computing the vessel's position fix.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14646, Mar. 27, 1997; 63 FR 58329, Oct. 30, 1998; 64 FR 54745, Oct. 7, 1999; 65 FR 77466, Dec. 11, 2000; 69 FR 22946, Apr. 27, 2004; 69 FR 67796, Nov. 19, 2004; 70 FR 21941, Apr. 28, 2005; 70 FR 48867, Aug. 22, 2005; 70 FR 76426, Dec. 27, 2005; 71 FR 33224, June 8, 2006; 72 FR 11274, Mar. 12, 2007; 72 FR 51702, Sept. 11, 2007; 72 FR 73278, Dec. 27, 2007; 73 FR 20119, Apr. 14, 2008; 73 FR 30802, May 29, 2008]

## § 648.10 DAS and VMS notification requirements.

(a) *VMS Demarcation Line*. The VMS Demarcation Line is defined by straight lines connecting the following coordinates in the order stated (a copy of a map showing the line is available from the Regional Administrator upon request):

### VMS DEMARCATION LINE

Description	N. Lat.	W. Long.
1. Northern terminus point (Canada landmass) .....	45°03'	66°47'
2. A point east of West Quoddy Head Light .....	44°48.9'	66°56.1'
3. A point east of Little River Light .....	44°39.0'	67°10.5'
4. Whistle Buoy "8BI" (SSE of Baker Island) .....	44°13.6'	68°10.8'
5. Isle au Haut Light .....	44°03.9'	68°39.1'
6. Pemaquid Point Light .....	43°50.2'	69°30.4'
7. A point west of Halfway Rock .....	43°38.0'	70°05.0'
8. A point east of Cape Neddick Light .....	43°09.9'	70°34.5'
9. Merrimack River Entrance "MR" Whistle Buoy .....	42°48.6'	70°47.1'
10. Halibut Point Gong Buoy "1AHP" .....	42°42.0'	70°37.5'
11. Connecting reference point .....	42°40'	70°30'
12. Whistle Buoy "2" off Eastern Point .....	42°34.3'	70°39.8'
13. The Graves Light (Boston) .....	42°21.9'	70°52.2'
14. Minots Ledge Light .....	42°16.2'	70°45.6'
15. Farnham Rock Lighted Bell Buoy .....	42°05.6'	70°36.5'
16. Cape Cod Canal Bell Buoy "CC" .....	41°48.9'	70°27.7'
17. A point inside Cape Cod Bay .....	41°48.9'	70°05'
18. Race Point Lighted Bell Buoy "RP" .....	42°04.9'	70°16.8'
19. Peaked Hill Bar Whistle Buoy "2PH" .....	42°07.0'	70°06.2'
20. Connecting point, off Nauset Light .....	41°50'	69°53'
21. A point south of Chatham "C" Whistle Buoy .....	41°38'	69°55.2'
22. A point in eastern Vineyard Sound .....	41°30'	70°33'
23. A point east of Martha's Vineyard .....	41°22.2'	70°24.6'
24. A point east of Great Pt. Light, Nantucket .....	41°23.4'	69°57'
25. A point SE of Sankaty Head, Nantucket .....	41°13'	69°57'
26. A point west of Nantucket .....	41°15.6'	70°25.2'
27. Squibnocket Lighted Bell Buoy "1" .....	41°15.7'	70°46.3'
28. Wilbur Point (on Sconticut Neck) .....	41°35.2'	70°51.2'
29. Misham Point (on Smith Neck) .....	41°31.0'	70°57.2'
30. Sakonnet Entrance Lighted Whistle Buoy "SR" .....	41°25.7'	71°13.4'
31. Point Judith Lighted Whistle Buoy "2" .....	41°19.3'	71°28.6'
32. A point off Block Island Southeast Light .....	41°08.2'	71°32.1'
33. Shinnecock Inlet Lighted Whistle Buoy "SH" .....	40°49.0'	72°28.6'
34. Scotland Horn Buoy "S", off Sandy Hook (NJ) .....	40°26.5'	73°55.0'
35. Barnegat Lighted Gong Buoy "2" .....	39°45.5'	73°59.5'
36. A point east of Atlantic City Light .....	39°21.9'	74°22.7'
37. A point east of Hereford Inlet Light .....	39°00.4'	74°46'